IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.3436 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

P.K. RANA

Versus

DEPUTY DISTRICT MANAGER (GRADE-2)
GUJARAT STATE CIVIL SUPPLIES CORPORATION LIMITED & ANR.

Appearance:
1. Special Civil Application No. 3436 of 2004
MR. N.V. SOLANKI for Petitioner
MR. K.M. PATEL for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 03/03/2005

ORAL JUDGEMENT

1. The petitioner, serving as a Driver, with Gujarat State Civil Supplies Corporation Limited ("hereinafter referred to as "the Corporation" for short) is before this Court being aggrieved of Orders dated 18th September, 2003 and 15th November, 2003, as the respondent-Corporation ordered to deduct an amount of

Rs.25,386=00 from the salary of the petitioner towards the expenses incurred by the respondent-Corporation for "Tolat" (Weighman/Packer).

2. The case of the respondent-Corporation is that the Gujarat State Civil Supplies Corporation Limited issued a Circular bearing No. NA.PU.NI./261/Vi.Bh./S.S.P.D.S./92 dated 19th June, 1992, prescribing that in a mobile van, there will be only two employees, namely, one driver and another salesman. It was provided in the said circular that the driver will be performing the job of "Tolat" (Weighman/Packer). The case is that as the petitioner did not perform the job of "Tolat" (Weighman/Packer), the Corporation had to incur `expenses', which is sought to be recovered from the salary of the petitioner.

After the impugned Order dated 18th September, 2003 was passed, the petitioner was sent on deputation to the Office of Deputy Chief Electrical Inspector, Vigilance Squad, Gandhinagar, by letter dated 23rd December, 2003. Thereafter, by letter dated 15th November, 2003, respondent no.1 asked respondent no.2 to deduct Rs.500=00 from the salary of the petitioner. The petitioner, being aggrieved of that, is before this Court.

3. Mr.N.V.Solanki, learned Advocate appearing for the petitioner, strenuously submitted that both the orders are passed without affording an opportunity of hearing to the petitioner and, therefore, on the face of it, there is violation of `principles of natural justice'. He also submitted that the second order is as such a consequential order of the first one, but then, the same cannot be allowed to stand as the first order, which is the basis for passing the second order, is bad in law, being in violation of the principles of natural justice.

The learned Advocate for the petitioner submitted that the petitioner was appointed as a `driver' and by a circular, he could not have been assigned the duties of "Tolat" (Weighman/Packer). He submitted that assuming for the sake of argument that the petitioner could have been assigned these duties, then, the respondent-Corporation should have taken necessary disciplinary action for not performing the duties of "Tolat" at the relevant time. He submitted that for the reasons best known to the respondent-Corporation, it authorised the `Salesman' to engage some third person to work as "Tolat" (Weighman/Packer) and that third person

was paid on vouchers. Now, after almost six years, orders under challenge are passed for recovering the amount, paid to the third person from the salary of the petitioner. He submitted that by no stretched standards of legality and validity, the orders can be held to be legal and valid and, therefore, the same be quashed and set aside. He further submitted that necessary direction be given to the respondent-Corporation to reimburse the petitioner the amount, which is deducted from the salary of the petitioner pursuant to the orders under challenge.

4. Mr.K.M.Patel, learned Advocate appearing for the respondent-Corporation, submitted that the petitioner was assigned additional duties in a lawful manner by Circular dated 19th June, 1992. He strenuously submitted that as the petitioner did not discharge the duties assigned to him, the Corporation had to incur the expenditure, which the petitioner must bear. He submitted that the impugned orders are without any flaw and therefore, not required to be quashed and set aside by this Court. He submitted that the impugned orders are passed not only against the petitioner, but also, against other similarly situated persons, giving them the same treatment, which is clear from Order dated 18th September, 2003, as that order is for three similarly situated persons. He submitted that there is no question of violation of principles of natural justice and hence, the petition be dismissed.

5. Having heard the learned Advocates for the parties and having taken into consideration their rival submissions, this Court is of the opinion that Order dated 18th September, 2003 do not stand the test of legality, therefore, quashed and set aside. As Order dated 15th November, 2003 is a consequential order, the same is also quashed and set aside.

6. In the result, the petition is allowed. The respondents are directed to reimburse the petitioner the amount, deducted from the salary of the petitioner, pursuant to the aforesaid orders. Rule is made absolute. No order as to costs.

(Ravi R. Tripathi, J.)
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